

4-10.000

JUDGMENTS AGAINST THE GOVERNMENT

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Judgment Against the Government -- Generally

To prevent difficulties in payment and unnecessary appeals due to the irregularity of form or the inclusion of items of recovery which are improper, the United States Attorney should arrange to prepare the form of judgment to be entered whenever possible, or, if this is not possible, be sure to review the form of the proposed judgment before its entry. See Civil Resource Manual at 212 as to the allowance of interest. The limited circumstances in which court costs may be included in judgments is discussed in the Civil Resource Manual at 221. See Civil Resource Manual at 220 as to attorneys' fees for plaintiff's counsel.

Except when a judgment is entered by consent in order to provide for the payment of an agreed compromise, all adverse judgments should be brought to the attention of the Civil Division immediately, with the United States Attorney's reasoned recommendation for or against appeal. See USAM Title 2, for appeals generally.

The GAO has taken the position that it is without authority to offset or withhold tax claims from "backpay" judgments rendered against the United States, unless the judgment specifically states the amount of such withholding. The Internal Revenue Service, which views such awards as taxable income, has nevertheless requested that appropriate steps be taken to ensure that applicable taxes are collected therefrom. Accordingly, whenever a judgment for back pay (or for any other amount deemed to be taxable income) is being entered, the attorney handling the case for the government should either request the court to specify that applicable taxes may be withheld, or separately agree with the plaintiff (in writing) concerning an appropriate offset.

4-10.100 Payment and Satisfaction of Judgement Against the Government

A check in payment of an adverse judgment may be obtained in some cases from the client agency, if it has an appropriation or other source of funds available. Government corporations and "sue and be sued" officials and agencies may have such an appropriation, or a revolving fund, from which payment can be made. Adverse National Service Life Insurance (NSLI) judgments (as distinguished from those which are entered as a result of compromise) are payable by the Department of Veterans Affairs (VA) from insurance trust funds. However, if the loss is due to the extra hazards of war, the VA will pay the NSLI judgment from appropriations. Judgments in Federal Tort Claims Act cases, with few exceptions, are paid with treasury funds after certification by the Department of the Treasury. If the FTCA judgment is based upon the activities of a Federally Supported Health Center, the judgment is paid by the Department of Health and Human Services rather than by the Treasury. Likewise, the Postal Service pays judgments for its torts. In a few instances, funds for the payment of a judgment may be provided by an insurer, surety, or indemnitor. Normally, the Civil Division's communication advising

that further appellate review will not be sought will provide information as to the method of payment. If payment cannot be obtained from the sources indicated above, payment of final judgments will be made pursuant to 31 U.S.C. § 1304. *See* USAM 4-10.110. In the past, the judgment fund, which pays judgments pursuant to 31 U.S.C. § 1304, was administered by the General Accounting Office. Effective June 30, 1996, that authority was transferred to the Office of Management and Budget (OMB) pursuant to § 211 of the Legislative Appropriation Act of 1996, and redelegated by OMB to the Department of the Treasury, Financial Management Service.

In tort actions, parties in addition to the injured plaintiff may have a legal interest in the funds generated by a judgment or settlement. *See United States v. Aetna Casualty & Surety Co.*, 338 U.S. 366 (1949). For example, a workers' compensation carrier may have a lien for insurance payments it has already sent to the injured plaintiff. Any party which is subrogated to an interest of a party plaintiff can separately assert its rights. If the government pays the injured plaintiff the full amount of damages, it may still be liable for payment to the subrogated party for the amount the subrogated party paid out. Therefore, United States Attorneys should design settlement documents and documents for release of judgment so as to extinguish all claims arising from the subject matter of the lawsuit, including not only the claim of the primary plaintiff but also of all parties having a subrogated interest. If necessary, the Department of the Treasury should be requested to issue separate checks to insure extinguishment of separate interest.

National Service Life Insurance judgments are frequently payable in installments over a long period. In such cases, the installments payable to the beneficiary and the beneficiary's attorney will be paid directly (and separately) to them by the Department of Veterans' Affairs. *See* 38 U.S.C. § 3020.

4-10.110 Payment of Judgments by the Department of the Treasury and Postal Service

Final judgments adverse to the United States can sometimes be paid by the client agency, or an insurer, surety, or indemnitor. If payment cannot be effected in that manner, payment can usually be made from the funds appropriated pursuant to 31 U.S.C. § 1304. Thus, judgments (and certain compromise settlements, *see* USAM 4-3.200), payable in accordance with 28 U.S.C. §§ 2414 or 2517, which are final or of which further appellate review will not be sought, may be paid by the Department of the Treasury, Financial Management Service (FMS) or the Postal Service, as appropriate. (As noted earlier, prior to June 30, 1996, the General Accounting Office ("GAO") was responsible for the administration of the Judgment Fund, 31 U.S.C. § 1304. That authority was transferred to OMB by § 211 of the Legislative Appropriations Act of 1996, and redelegated to the Department of the Treasury, Financial Management Service.)

In cases delegated to them by the Civil Division, United States Attorneys should submit adverse final money judgments or compromises which cannot be paid by the client agency, insurer, surety, or indemnitor, to FMS or the Postal Service as appropriate. Note that judgments adverse to the United States are not "final" until the Solicitor General has determined that no further appellate review will be sought and no judgments should be sent to the FMS or Postal Service for payment until such a determination has been made. (*See* USAM 2-2.120). Also note that unique payment procedures make it necessary to forward Swine Flu settlements through the Civil Division for distribution to the FMS.

In order to facilitate prompt payment of such judgments or compromises, standardized transmittal letters should be used whenever the Assistant United States Attorney forwards final judgments or settlements to the FMS or the Postal Service, as appropriate, for payment. Sample transmittal letters may be found in the Civil Resource Manual at 224 *et seq.* In addition, an FMS Form 196, Adverse Judgment Data Sheet, must be completed and submitted with the transmittal letter. Copies of the FMS Form 196 can be obtained directly from FMS. These transmittal letters and the FMS Form 196 will also be used by other Divisions of the Department so that the FMS will receive the same basic data whenever payments are requested.

Note that a different letter is to be used in cases forwarding a backpay award for payment because deductions for certain items to be withheld from such award must be made. *See* Civil Resource Manual at 225.

There is also a separate data sheet required for awards of attorney fees to enable FMS and OMB to gather specific data on the number and amounts of such fees being paid by the government. Copies of that data sheet can also be obtained from FMS.